

**BEFORE THE
NATURAL RESOURCES COMMISSION
OF THE
STATE OF INDIANA**

IN THE MATTER OF:

CONSOLIDATED)	Administrative Cause
DNR PROPERTY)	Number: 09-109D
FIREARMS AMENDMENTS)	(LSA Document #09-470(F))

**RULE PROCESSING, REPORT OF PUBLIC HEARING,
AND RECOMMENDATION FOR FINAL ADOPTION**

1. RULE PROCESSING

For consideration are amendments proposed to 312 IAC 8-2-3 which governs firearms, hunting, and trapping on DNR properties. More particularly, the amendments address the use of firearms in two contexts. The first context is a housekeeping measure that seeks to address an unintended result of allowing the possession of handguns otherwise authorized by a license or by statute. The second context would authorize the use of moving targets on supervised firing ranges, if the DNR determines a hazard to public safety would not result. These two concepts were originally considered separately but have been combined into a single rule adoption for administrative efficiency.

The Natural Resources Commission considered and acted upon the first context during its meeting of January 13, 2009. As reflected in the Commission's minutes:

**Consideration for preliminary adoption of amendments to 312 IAC 8-2-3
regarding the discharge of firearms on DNR properties...**

John Bergman, Assistant Director of the Division of State Parks and Reservoirs, presented this item. He said, "A year ago there was an incident at Brown County State Park where two individuals were legally licensed to carry handguns for target shooting and were just outside the campground. When we reviewed the rules, we didn't believe—now that people can legally have a licensed handgun on a state park and DNR properties—we had a rule that actually prevented them from discharging that weapon, and certainly not on a state park." Bergman said the "Property Regulations Committee" met to discuss an amendment to the existing rules to address this type of situation, and to clarify the "whole discharge issue" on all of DNR properties. He recommended preliminary adoption of the proposed amendments to 312 IAC 8-2-3.

Mark Ahearn asked, "Help me understand how the 200-foot requirement is obsolete language?"

Bergman said, "Right now we can regulate that by signage anyway, so it's not necessarily obsolete. If we want to create a safety zone around any area, we can still create that safety zone it just doesn't necessarily have to be 200 feet."

Steve Lucas said the subject of the rule proposal was "talked about a lot" with the property holding divisions. "It is challenging, but in situations where the 200-foot limitation would have applied before, there is signage typically that applies. We couldn't come up with a situation that wasn't covered."

Jane Ann Stautz noted her understanding that persons can lawfully possess and discharge a handgun on a DNR property, "but yet you want to protect folks that are in the buildings or campsites that they are not discharging it nearby. I didn't understand how that was protected" with the proposed amendment. "I'm not sure all the parks today, or beaches, have that signage with a buffer zone around [the areas] for those that might be hunting in the park area. If that the case, that's wonderful."

Bergman noted that hunting and carrying of a loaded firearm are now allowed in a state park, but these things were not previously allowed. "It was never an issue on a state park, but obviously on reservoirs, fish and wildlife areas, and forestry you could. That's how the rules were written." He said the rule was amended to allow a person to carry a licensed handgun, and that "opened up the state park issue to consideration of 'Okay, now they have a loaded weapon with them legally, when can they discharge it?'". He said the proposed rule amendment attempts to address this issue.

Stautz indicated she "supports and agrees" with the proposed rule concept, but she said she was still concerned the proposed rule, as written, allowed a firearm to be discharged lawfully within 200 feet "or less than that" of structures, campsites, and other areas. "I don't see a buffer zone of where they can discharge that firearm when they are hunting lawfully on the property."

Bergman said buffer zones are "usually marked with signage. Signage is allowed under the property regulations to create signs and create rules. We can always make sure our buffer zones are signed as they are now."

John Davis said the proposed rule "tries to prohibit discharge" on properties that are listed in 312 IAC 8-2-3(b). "It leaves discharge legal on a reservoir or fish and wildlife area. That's where the 200-foot restriction is obsolete, because those are all posted already."

Lucas agreed with Davis. "Generally speaking, you can't...discharge in a park anyway." The Department establishes safety zones within a state park where there is a hunt to control deer. "We talked about this extensively. It was an issue that troubled all of us.... There was a whole paradigm shift in terms of how the rules were structured when licensed firearms were allowed on all DNR properties. Whereas before you couldn't have a firearm, now you can. Instead of possession, the rule would now control where you can discharge and where you

can't." Lucas said "every example of a situation presented by the property managers was seemingly covered by signage, or by some other restriction," under the terms of the proposed amendments.

Davis said the "200 feet language wouldn't be obsolete if a sign fell down, and someone was hunting on a reservoir, and they didn't see a sign, and there was no rule prohibiting" discharge of firearm within 200 feet. "There wouldn't be anything that would prevent them from discharging a firearm next to the manager's house."

Stautz said, "Yes. So if it's not posted, you could have a potential situation. I think it's a drafting issue."

Ahearn said, "My concern is that posting of signs is not near as informative or comprehensive means of communication as having everyone know what the law is. If we are looking at 'serious' communications versus 'inconsequential' consequences it maybe doesn't matter. But if we are looking at discharging a firearm where we think there will be people—maybe I'm missing the point—that seems pretty substantial consequences. The means to communicating that law just strikes me that it ought to be more than whether they saw the sign or an area was adequately signed."

Lucas said that if existing subsection (g) is kept in the rule, proposed subsection (c) would "to a large extent conflict. Part of the problem is if you say there is a blanket prohibition on discharge of a firearm in all situations, let's say at a campsite or boat dock, then that really means that you can't discharge a firearm in the lawful defense of person or property. You can't discharge a firearm as a law enforcement officer in those locations, or you are committing a violation". Ahearn, "But doesn't it say, 'unless otherwise designated'?"

Bergman said during deer control hunts in state parks, the entire state park is closed. The Chair asked, "Is it possible that we could add something to this such as 'unless otherwise provided in law'?" Lucas said, "I don't think that gets us anywhere, because it's 'otherwise provided by law' where? The rule needs to be specific." An impetus for the proposal was the reluctance by a sheriff's office to issue a ticket for discharge of a firearm on a state park, when the activity was not in proximity to a campground or other protected area. "The Deputy didn't see a blanket prohibition on the discharge of a firearm." As we wrote proposed subsection (c), we saw that there are inherent conflicts with existing subsection (g). He added, "We'll go forward however the Commission prefers, but at this point, I couldn't articulate what I would think would be better language" than what has been proposed.

The Chair asked for additional input from Jane Stautz or Mark Ahearn. Stautz said, "As I was looking at it, it was really the item" referenced in 312 IAC 8-2-3(c)(3), in the lawful pursuit of wild animals, "that's where you are going to have probably situations on your reservoirs where they would be hunting, and we would not want them discharging or hunting within 200 feet" of a campground or similar protected site. Lucas said proposed 312 IAC 8-2-3(c)(3) could be amended and moved to a new (c)(5), and then with added language reading along the lines of "However, this authorization does not allow discharge within 200

feet of any of the following:”. Lucas asked whether this suggested change would address the Commission’s concerns.

Ahearn said, “Yes. I’m more comfortable with that.”

Stautz said, “Yes. It does.”

Ahearn said, “So, if we are preliminarily adopting this rule then we would say ‘with (c)(3) modified by the terms of [existing subsection] (g)?” Lucas responded, “Correct.”

Jane Ann Stautz moved to approve for preliminary adoption of proposed amendments to 312 IAC 8-2-3 with the modification that proposed subsection (c)(3) be restated as subsection (c)(5), the numbers changed accordingly, to include the existing language in existing subsection (g). Robert Wright seconded the motion. Upon a voice vote, the motion carried.

The Natural Resources Commission considered and acted upon the second context during its meeting of May 19, 2009. As reflected in the Commission’s minutes:

Consideration of Preliminary Adoption of Amendments to 312 IAC 8-2-3 to Authorize the Use of Alternative Targets at DNR’s Supervised Shooting Ranges, if DNR Determines the Use Would Not Pose a Safety Hazard....

Mitch Marcus of the Division of Fish and Wildlife presented this item. He said that recommended for preliminary adoption were amendments to authorize the use of alternative targets at DNR’s supervised shooting ranges, if the DNR determined their use would not pose a safety hazard. Marcus provided an example of the kind of target that might be used if the rule amendment were adopted. He said patrons would not be authorized to bring their own targets.

Pat Early moved to give preliminary adoption to amendments to 312 IAC 8-2-3 to authorize the use of alternative targets, at DNR’s supervised shooting ranges, where the DNR determined their use would not pose a safety hazard. Tom Easterly seconded the motion. Upon a voice vote, the motion carried.

A “notice of intent” to adopt the proposed consolidated rule amendments was posted in the INDIANA REGISTER on June 17, 2009 as LSA Document #09-470. The notice listed Stephen Lucas of the NRC’s Division of Hearings as the “small business regulatory coordinator” for the proposal.

As specified by Executive Order, a proposed fiscal analysis of the rule proposal was submitted to the Office of Management and Budget on February 29. In a letter dated

September 23 and received September 29, 2009, the Office of Management and Budget approved the proposed fiscal analysis.

Also on September 29, 2009, the Division of Hearings submitted a copy of the proposed rule and corresponding “Economic Impact Statement” to the Legislative Services Agency. On the next day, LSA provided an intended date of posting of October 14, 2009. On September 30, the Division of Hearings provided LSA with a “Notice of Public Hearing”. On October 1, LSA issued the Commission an “authorization to proceed” with the rule proposal.

A public hearing on the proposal was scheduled for November 16, 2009 at 2:00 p.m., EST, in the Indiana Government Center North, 100 North Senate Avenue, Room N501, Indianapolis, Indiana. Notice of the public hearing and the text of the proposed amendments were posted in the INDIANA REGISTER on October 14, 2009. This notice included the statement under IC 4-22-2.1-5 concerning rules affecting small businesses. The notice also included information required under IC 4-22-2-24. Notice of the public hearing with similar information was published on October 14, 2009 in the Indianapolis DAILY STAR, a newspaper of general circulation in Marion County, Indiana. In addition, notice of the public hearing and a summary of the proposed rule changes were published on the calendar for the Commission’s website.

2. REPORT OF PUBLIC HEARING

The public hearing was convened in Indianapolis as scheduled on November 16, 2009. No member of the public appeared. No member of the public has otherwise offered comments on the proposed amendments.

3. RECOMMENDATION FOR FINAL ADOPTION

The proposed rule amendments seek to clarify that the lawful possession of firearms on a DNR property does not authorize their discharge except as specifically provided at an approved site (such as a shooting range) or during the conduct of an authorized activity (such as when hunting is approved or in the lawful defense of persons or property).

AGENDA ITEM #11

Second, the proposed rules would authorize the use of alternative targets at DNR's supervised shooting ranges, if the DNR determines their use would not pose a safety hazards. These amendments present policy clarifications or modifications on properties where the DNR is not only the regulator but also the proprietor, and they are within the Commission's discretion to accomplish.

The propose rules as published for preliminary adoption appear to be lawful and reasonably structured for their intended purposes. The procedural requirements for rule adoption have seemingly been satisfied. The proposed amendments published in the INDIANA REGISTER, and attached as Exhibit "A", are recommended for final adoption.

Dated: November 24, 2009

Stephen L. Lucas
Hearing Officer

Exhibit "A"

TITLE 312 NATURAL RESOURCES COMMISSION

Final Rule

LSA Document #09-470(F)

DIGEST

Amends 312 IAC 8-2-3, governing the use of firearms, hunting, and trapping on DNR properties, to authorize the use of alternative targets at supervised shooting ranges if the Department of Natural Resources determines the use would not pose a hazard to public safety and to resolve a possible ambiguity, which was occasioned by recent rule modifications to standards for the possession of firearms, regarding the discharge of firearms. Effective January 1, 2011.

IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Businesses

312 IAC 8-2-3

SECTION 1. 312 IAC 8-2-3 IS AMENDED TO READ AS FOLLOWS:

312 IAC 8-2-3 Firearms, hunting, and trapping

Authority: IC 14-10-2-4; IC 14-11-2-1; IC 14-22-2-6

Affected: IC 14-22-11-1; IC 35-47-2

Sec. 3. (a) A person must not possess a firearm or bow and arrows on a DNR property unless one (1) of the following conditions apply:

- (1) The firearm or bow and arrows are:
 - (A) unloaded and uncocked; and
 - (B) placed in a case or locked within a vehicle.
- (2) The firearm or bow and arrows are possessed at, and of a type designated for usage on:
 - (A) a rifle;
 - (B) a pistol;
 - (C) a shotgun; or
 - (D) an archery;

range.

(3) The firearm or bow and arrows are being used in the lawful pursuit of either of the following:

- (A) A wild animal on a DNR property authorized for that purpose.
- (B) A groundhog as authorized under a license.

(4) The person possesses a handgun on a DNR property other than a reservoir owned by the U.S. Army Corps of Engineers or Falls of the Ohio State Park:

- (A) with a valid unlimited license to carry a handgun:
 - (i) issued under IC 35-47-2-3; or
 - (ii) recognized under IC 35-47-2-21(b); or

(B) pursuant to an exemption to handgun licensure requirements as authorized under IC 35-47-2-2.

(b) Except as provided in subsection (a)(1) or (a)(4), a firearm or bow and arrows may not be possessed on DNR properties within any of the following:

- (1) A nature preserve unless hunting is authorized under subsection ~~(e)~~ **(d)**.
- (2) A property administered by the division of state museums and historic sites.
- (3) A campground.
- (4) A picnic area.
- (5) A beach.
- (6) A service area.
- (7) A headquarters building.
- (8) A hunter check station.
- (9) A developed recreation site.

(c) A person must not discharge a firearm or bow and arrows on a DNR property except as follows:

- (1) As authorized for a law enforcement officer.**
- (2) In the lawful defense of persons or property.**
- (3) Under a department permit that authorizes the discharge.**
- (4) As authorized at a shooting range.**
- (5) In the lawful pursuit of wild animals. The exception provided in this subdivision does not apply within two hundred (200) feet of any of the following:**

- (A) A campsite.**
- (B) A boat dock.**
- (C) A launching ramp.**
- (D) A picnic area.**
- (E) A bridge.**

~~(e)~~ **(d)** A person may hunt on the following DNR properties:

- (1) A state forest administered by the division of forestry, including a portion of a state forest that is a nature preserve.
- (2) A reservoir property administered by the division of state parks and reservoirs.
- (3) A wildlife area administered by the division of fish and wildlife, including a portion of a wildlife area that is a nature preserve.
- (4) A nature preserve not otherwise approved for hunting under this subsection if approved in a written authorization by the director of the division of nature preserves.

~~(d)~~ **(e)** A person hunting on any of the areas described in subsection ~~(e)~~ **(d)** must do the following:

- (1) Comply with all federal and state:
 - (A) hunting;
 - (B) trapping; and
 - (C) firearms;laws.
- (2) On a fish and wildlife area and a reservoir property, obtain a one (1) day hunting permit and record from a checking station. The person must:
 - (A) retain the permit and record card while in the field for the authorized date; and
 - (B) as directed, return them to the department.
- (3) Refrain from hunting on a nature preserve if prohibited by signage posted at the site.

~~(e)~~ **(f)** Unless otherwise posted or designated on a property map, a person must not place a trap except as authorized by a license issued for a property by an authorized representative. This license is in addition to the licensing requirement for traps set forth in IC 14-22-11-1.

~~(f)~~ (g) A person must not run dogs, except:

- (1) during the lawful pursuit of wild animals; or
- (2) as authorized by a license for field trials or in a designated training area.

A property administered by the division of fish and wildlife may be designated for training purposes without requiring a field trial permit. Only dogs may be used during field trials on a DNR property, except where authorized by a license on a fish and wildlife property.

~~(g) Unless otherwise designated, a person must not discharge a firearm or bow and arrows within two hundred (200) feet of any of the following:~~

- ~~(1) A campsite.~~
- ~~(2) A boat dock.~~
- ~~(3) A launching ramp.~~
- ~~(4) A picnic area.~~
- ~~(5) A bridge.~~

(h) A person must not leave a portable tree blind or duck blind unattended except for the period authorized by 312 IAC 9-3-2(l).

(i) The following terms apply to the use of shooting ranges:

(1) A person must not use a shooting range unless the person is:

- (A) at least eighteen (18) years of age; or
- (B) accompanied by a person who is at least eighteen (18) years of age.

(2) A person must:

- (A) register with the department; and
- (B) pay any applicable fees;

before using a shooting range.

(3) **Except as otherwise provided in this subdivision, a person must shoot only at paper targets placed on target holders provided by the department. ~~All firing~~ An authorized representative may approve the use of alternative targets on a supervised shooting range if the department determines a hazard to public safety would not result.**

(4) **A person must be fire downrange with and take** reasonable care ~~taken~~ to assure any projectile is stopped by the range backstop.

~~(4)~~ (5) Shot not larger than size 6 must be used on a shotgun range.

~~(5)~~ (6) A person must not:

- (A) discharge a firearm using automatic fire;
- (B) use tracer, armor-piercing, or incendiary rounds;
- (C) play on, climb on, walk on, or shoot into or from the side berms; or
- (D) shoot at clay pigeons, except on a site designated for shooting clay pigeons.

Glass and other forms of breakable targets must not be used on a shooting range.

~~(6)~~ (7) A person must dispose of the targets used by the person under section 2(a) of this rule.

~~(7)~~ (8) Permission must be obtained from the department in advance for a shooting event that involves any of the following:

- (A) An entry fee.
- (B) Competition for any of the following:
 - (i) Cash.
 - (ii) Awards.
 - (iii) Trophies.
 - (iv) Citations.
 - (v) Prizes.
- (C) The exclusive use of the range or facilities.

AGENDA ITEM #11

(D) A portion of the event occurring between sunset and sunrise.

~~(8)~~ (9) On a field course, signs and markers must be staked. Trees must not be marked or damaged.

(j) A person must not take a reptile or amphibian unless the person is issued a scientific collector license under 312 IAC 9-10-6. Exempted from this subsection are:

(1) turtles taken under 312 IAC 9-5-2; and

(2) frogs taken under 312 IAC 9-5-3;

from a DNR property where hunting or fishing is authorized.

(Natural Resources Commission; 312 IAC 8-2-3; filed Oct 28, 1998, 3:32 p.m.: 22 IR 739, eff Jan 1, 1999; filed Nov 5, 1999, 10:14 a.m.: 23 IR 553, eff Jan 1, 2000; filed Jun 17, 2002, 4:13 p.m.: 25 IR 3714; filed Sep 19, 2003, 8:14 a.m.: 27 IR 456; readopted filed Nov 17, 2004, 11:00 a.m.: 28 IR 1315; filed Sep 14, 2005, 2:45 p.m.: 29 IR 461, eff Jan 1, 2006; filed Jul 11, 2006, 9:04 a.m.: 20060802-IR-312060009FRA; filed Sep 6, 2007, 12:20 p.m.: 20071003-IR-312070023FRA; filed Mar 11, 2008, 9:34 a.m.: 20080409-IR-312070449FRA)